

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

WALTER BECK CORPORATION d/b/a THE RAINBOW INN,)	CIVIL DIVISION
)	
Plaintiff,)	Civil Action No. 04-348 - Erie
)	
vs.)	JUDGE MAURICE B. COHILL, JR.
)	
SAFECO CORPORATION, AMERICAN)	
ECONOMY INSURANCE COMPANY, and)	
AMERICAN STATES INSURANCE)	
COMPANY,)	
)	
Defendants.)	

ORDER OF COURT

AND NOW, this ____ day of _____, 2007, upon Walter Beck Corporation d/b/a The Rainbow Inn's Motion for Discovery Sanctions Pursuant to Rule 37, and any briefing and argument by the parties, it is hereby ORDERED, ADJUDGED and DECREED that said Motion is GRANTED. It is further ORDERED, ADJUDGED, and DECREED that the Defendants are jointly and severally liable to Walter Beck Corporation d/b/a The Rainbow Inn for breach of the insurance contract with Walter Beck Corporation d/b/a The Rainbow Inn as a discovery sanction for failing to produce certain key documents in this case, namely Safeco's electronic claims file, which should have been produced at the time of the Rule 26(a) disclosures, and which was requested by Walter Beck Corporation d/b/a The Rainbow Inn on numerous occasions throughout discovery, yet Defendants failed to produce such. This Court has reviewed the Defendants' conduct in light of the following factors:

- (1) the extent of the *party's* personal responsibility;
- (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery;

- (3) a *history* of dilatoriness;
- (4) whether the conduct of the party or the attorney was *willful* or in *bad faith*;
- (5) the effectiveness of sanctions other than dismissal, which entails an analysis of alternative sanctions; and
- (6) the *meritoriousness* of the claim or defense.

Upon such review, this Court finds that each of these factors weighs heavily in favor of Walter Beck Corporation d/b/a The Rainbow Inn and against the Defendants, most notably due to the clear record of delay and contumacious conduct displayed by the Defendants and their counsel and the resulting substantial prejudiced incurred by Walter Beck Corporation d/b/a The Rainbow Inn, and that an award of summary judgment in favor of Walter Beck Corporation d/b/a The Rainbow Inn and against the Defendants is the only appropriate remedy to be exercised by this Court.

The amount of monetary damages owed to Walter Beck Corporation d/b/a The Rainbow Inn by the Defendants remains to be determined.

_____, J.